

Paul J. Garrick (OSB No. 824759)
Staff Attorney
NALIKO MARKEL, TRUSTEE
400 East Second Avenue, Suite 200
Eugene, OR 97401
Telephone: (541) 343-1555

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re:

JAMES ROBERT ANTONINI,

Debtor.

Case No. 20-60187-tmr13

**TRUSTEE'S OBJECTION TO
CONFIRMATION; AND MOTION TO
DISMISS**

Hearing Date: 7/21/20

Hearing Time: 1:30 p.m.

NALIKO MARKEL, Trustee, objects to confirmation of the debtor's Amended Chapter 13 Plan (Doc. 24; plan dated 6/8/20)(the "Plan"). The reasons for objection are:

1. **Feasibility.** The plan is underfunded by approximately \$18,469. The Trustee's calculations include priority claims estimated at \$21,812. The priority claims include Claim No. 14 (ODR = \$5,074); Claim No. 13 (Mr. Velasquez = \$3,025 (consumer deposit)); and the IRS priority claim, estimated at \$13,713. The IRS's most recent proof of claim (Claim No. 12; filed 4/1/20) lists a priority claim in the amount of \$10,487.10, including a 2019 tax debt estimated at \$1,915.20. However, according to his 2019 IRS tax return, the debtor owes \$5,141, or \$3,225.80 more than the estimate. Thus, it appears that the IRS's priority claim will be \$13,713 (\$10,487 + \$3,226 = \$13,713).

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1 2. **Disposable income: Forms 122C-1 and C-2.** According to the recently
2 amended means test forms (Doc. 26,27; filed 6/10/20), the debtor has monthly disposable
3 income of \$115.64, so general unsecured creditors should receive not less than \$6,938
4 ($\$115.64 \times 60 = \$6,938.40$). Unsecured creditors will receive no payments under the Plan.

5 3. Several issues must be resolved before the means test calculation can be
6 finalized. On one hand, the expense for priority claims, *see* Form 122C-2, line 35, will likely
7 increase, for the reasons stated in paragraph 1., above. On the other hand, the trustee objects
8 to the retirement deduction of \$250 on Form 122C-2, line 41, pursuant to In re Parks, 475
9 B.R. 703 (9th Cir. BAP 2012). Finally, the trustee requests additional documents,
10 explanation and proof to support the \$998 adjustment (reduction) in income on Form 122C-
11 2, line 43 (this purported change should probably be listed on line 46), and the tax expense
12 on Form 122C-2, line 16 (it appears that this adjustment should also be listed on line 46).

13 4. **Disposable Income: tax refunds.** Similar to the prior plan, the Plan continues
14 the debtor's refusal to devote tax refunds for the applicable commitment period. Tax refunds
15 are not projected as income on amended Schedule I. Other than the blanket refusal to devote
16 refunds to the plan, there is no plan provision permitting the debtor to retain a reasonable
17 amount of tax refunds each year. It does not appear that the debtor has submitted an updated
18 tax calculation to support his recently amended documents. The most recent tax calculation
19 was received on 4/27/20.

20 5. The frequent - and substantial - changes to Schedules I and J, and Forms 122C-
21 1 and C-2, suggest that the debtor cannot accurately and precisely calculate his required tax
22 obligations over the next five years, and that he will not be able to comply with the
23 calculations, if they are correct. The feasibility issue identified above adds another wrinkle
24 to the analysis. The debtor must increase his plan payments to show that the plan is
25 arithmetically feasible. If so, he must show that the increase is accounted for in his tax
26 calculations. Even more important, the debtor must show by a preponderance of the

1 evidence that he will be able to make the required payments. Such a showing is especially
2 important in this case, where it will take four years or more to pay the \$36,000 secured claim
3 on the debtor's truck. A heightened review of the feasibility requirement may be an
4 unintended consequence of the debtor's (or his attorney's) aggressive push for "no tax
5 refund" plans.

6 6. **401(k) loan.** Amended Schedule I, line 5.d (part of Doc. 25) lists a retirement
7 loan payment of \$129. This expense was listed on the prior version of Schedule I (Doc. 20),
8 but not on the initial version of Schedule I (part of Doc. 1). The debtor's pay advices appear
9 to show that the deduction started on his March 13, 2020 paycheck. This case was filed on
10 January 24, 2020. Did the debtor obtain a 401(k) loan postpetition? At a minimum, more
11 information is required, and the plan payments should increase after the loan is paid off.

12 7. **Documents.** The trustee requests copies of the following documents:

13 a. Please continue to send pay advices, as received. The debtor has
14 faithfully complied with the trustee's prior requests. The most recent pay advice received is
15 for the pay period ending June 14, 2020

16 b. Copies of documents pertaining to the retirement loan discussed in
17 paragraph 6., above.

18 8. **Motion to Dismiss.** For the foregoing reasons, the Trustee moves the Court for
19 an order dismissing this case.

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21 NALIKO MARKEL, TRUSTEE

22 By: /s/ Paul J. Garrick
23 Paul J. Garrick, OSB No. 824759
24 Staff Attorney
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CERTIFICATE OF SERVICE

I hereby certify that based on the Bankruptcy Court's Electronic Filing records, the following person should be served electronically when the attached document is filed with the Court:

Lars H. Olsen, Attorney for Debtor

I hereby certify that on July 9, 2020, I served a copy of the foregoing TRUSTEE'S OBJECTION TO CONFIRMATION; AND MOTION OT DISMISS by mailing a copy of this document by United States First-Class mail, enclosed in a sealed envelope, with postage prepaid, and addressed to the following at the address stated below:

James Robert Antonini
91161 North Miller Street
Eugene, OR 97408

NALIKO MARKEL, TRUSTEE

By: /s/ Paul J. Garrick
Paul J. Garrick, OSB No. 824759
Staff Attorney